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Supreme Court, U.S.
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No. 00-1537

In the Supreme Court of the United States

Citicorp North America, Inc. & Affiliates,
Petitioner,

v.

Franchise Tax Board,
Respondent.

On Petition for Writ of Certiorari to the Court of Appeal of California for the First Appellate District

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Motion for Leave to File Out of Time Brief of *Amicus Curiae*
Committee On State Taxation
In Support of Petition for Writ of Certiorari

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The Committee On State Taxation (COST)[1] requests leave to file out of time a brief *amicus curiae* in support of Citicorp's Petition for Writ of Certiorari. COST respectively requests this Court to grant this motion because: a) COST was not accurately informed as to the extended due date of the Respondent's brief; b) COST has extensive experience in state tax issues which can aid this Court in reviewing the issue; and c) COST's brief represents the views of many multistate corporate taxpayers and in a short, direct form compliments the Petitioner's brief. COST's proposed brief is attached. Counsel for both the Petitioner and the Respondent have consented to the filing of this brief (written permission attached).

COST became aware of Citicorp's Petition for Certiorari approximately two weeks before May 6, 2001, the initial date that an *amicus* brief in support of the Petitioner would have been due in this case. The Petition for Certiorari was filed April 6, 2001. COST has a small staff (three full-time attorneys) and was initially concerned about its ability to finalize a brief in such a short time period. However, shortly thereafter COST was informed that the Respondent intended to file a motion for a 30 day extension, and it was COST's understanding that such an extension would revise any due date to June 6, 2001. As a result, COST determined that it had the staff and time resources to complete the brief. COST created an initial draft of the brief and arranged to send the brief to the printer on June 3, 2001. On June 1, 2001, however, COST staff discovered through conversations with the attorney for the Petitioner, that the Respondent's request for a 30 day extension had not been fully granted by this Court, and that the Respondent's due date had been set as May 30, 2001. As a result, COST was not able to timely file its *amicus* brief. COST immediately notified the clerk's office of the problem. Because of the confusion over the actual due date, COST asks that this Court accept its brief filed out of time.

COST believes that this Court's deliberations would be enhanced by COST's involvement because of COST's extensive experience in the state tax area. COST has filed numerous *amicus* briefs with this Court[2] in cases that COST believes are of national importance to multistate taxpayers and need

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[1] COST is a non-profit trade association, organized in 1969 with a membership of over 550 multistate corporations involved in interstate and international commerce. COST's objective is to preserve and promote equitable and nondiscriminatory state and local taxation of multi-jurisdictional business entities.

[2] *Newsweek, Inc. v. Department of Revenue of the State of Florida; General Motors Corporation v. Roger W. Tracy, Tax Commissioner of Ohio; Barclays Bank PLC v. Franchise Tax Board and Colgate-Palmolive*

judicial resolution at the highest level. Further, COST, as an organization, is dedicated to the education and advocacy of state tax issues and its staff and members spend considerable time analyzing the legal and policy issues related to this area.

Finally, COST notes that its brief complements the Petitioner's brief without adding unnecessary and burdensome repetition. COST's brief succinctly summarizes the issue involved and its affect on interstate corporate taxpayers.

Because of these extraordinary circumstances, COST respectfully requests that this Court accept COST's brief *amicus curiae* in support of Citicorp's Petition for Writ of Certiorari, as filed.

Respectfully submitted,

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Company v. Franchise Tax Board; Reich v. Collins; Geoffrey, Inc. v. South Carolina Department of Revenue and Taxation; The Kroger Co. v. The Kansas Department of Revenue; Gladwin Corp., v. Michael L. Patterson; South Central Bell Telephone Company, et al. v. State of Alabama; Topps Company v. Revenue Division of the Court of Claims Department of Treasury; Caterpillar Inc., v. The New Hampshire Department of Revenue Administration; Hunt - Wesson, Inc. v. Franchise Tax Board.